

E. No access to financial records shall be attempted before the expiration of the pertinent time period while awaiting receipt of a potential customer challenge, or prior to the adjudication of any challenge made.

F. The official who signs the customer notice shall be designated to receive any challenge from the customer.

G. When a customer fails to file a challenge to access to financial records within the above pertinent time periods, or after a challenge is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify in writing to the financial institution that such office has complied with the requirements of 12 U.S.C. Chapter 35. No access to any financial records shall be made before such certification (appendix M to this part) is provided the financial institution.

APPENDIX D TO PART 275—OBTAINING ACCESS BY SEARCH WARRANT

A. A Government authority may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure.

B. Unless a delay of notice has been obtained under provisions of appendix H to this part, the law enforcement office shall, no later than 90 days after serving the search warrant, mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [DoD office or activity] on [date] for the following purpose: [state purpose]. You may have rights under the Right to Financial Privacy Act of 1978."

C. In any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands, search authorizations signed by installation commanders, military judges, or magistrates shall not be used to gain access to financial records.

APPENDIX E TO PART 275—OBTAINING ACCESS FOR FOREIGN INTELLIGENCE, FOREIGN COUNTERINTELLIGENCE, AND INTERNATIONAL TERRORIST ACTIVITIES OR INVESTIGATIONS

A. Financial records may be obtained from a financial institution (as identified at §275.3) by an intelligence organization, as identified in DoD Directive 5240.1¹, authorized to conduct intelligence activities, to include investigation or analyses related to

international terrorism, pursuant to DoD Directive 5240.1 and Executive Order 12333.

B. The provisions of this part do not apply to the production and disclosure of financial records when requests are submitted by intelligence organizations except as may be required by this appendix.

C. When a request for financial records is made under paragraph A. of this appendix, a Component official designated by the Secretary of Defense, the Secretary of a Military Department, or the Head of the DoD Component authorized to conduct foreign intelligence or foreign counterintelligence activities shall certify to the financial institution that the requesting Component has complied with the provisions of U.S.C. chapter 35. Such certification in a format similar to appendix M to this part shall be made before obtaining any records.

D. An intelligence organization requesting financial records under paragraph A. of this appendix, may notify the financial institution from which records are sought 12 U.S.C. 3414(3) prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained. An intelligence organization requesting financial records under paragraph A. of this appendix, shall maintain an annual tabulation of the occasions in

E. An intelligence organization requesting financial records under paragraph A. of this appendix, shall maintain an annual tabulation of the occasions in which this access procedure was used.

APPENDIX F TO PART 275—OBTAINING EMERGENCY ACCESS

A. Except as provided in paragraphs B. and C. of this appendix, nothing in this part shall apply to a request for financial records from a financial institution when a determination is made that a delay in obtaining access to such records would create an imminent danger of:

1. Physical injury to any person.
2. Serious property damage.
3. Flight to avoid prosecution.

B. When access is made to financial records under paragraph A of this appendix, a Component official designated by the Secretary of Defense or the Secretary of a Military Department shall:

1. Certify in writing, in a format set forth in appendix M to this part, to the financial institution that the Component has complied with the provisions of 12 U.S.C. chapter 35, as a prerequisite to obtaining access.

2. Submit for filing with the appropriate court a signed sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

C. When access to financial records are obtained under paragraph A. of this appendix, a

¹Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

copy of the request, along with the following notice, shall be served on the person or mailed to the person's last known mailing address as soon as practicable after the records have been obtained unless a delay of notice has been obtained under appendix H of this part.

"Records concerning your transactions held by the financial institution named in the attached request were obtained by [Agency or Department] under the Right to Financial Privacy Act of 1978 on [date] for the following purpose: [state with reasonable specificity the nature of the law enforcement inquiry]. Emergency access to such records was obtained on the grounds that [state grounds]."

Mailings under this paragraph shall be by certified or registered mail.

APPENDIX G TO PART 275—RELEASING INFORMATION OBTAINED FROM FINANCIAL INSTITUTIONS

A. Financial records obtained under 12 U.S.C. chapter 35 shall be marked: "This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, and may not be transferred to another Federal Agency or Department without prior compliance with the transferring requirements of 12 U.S.C. 3412."

B. Financial records obtained under this part shall not be transferred to another Agency or Department outside the Department of Defense unless the head of the transferring law enforcement office, personnel security element, or intelligence organization, or designee, certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity (to include investigation or analyses related to international terrorism) within the jurisdiction of the receiving Agency or Department. Such certificates shall be maintained with the DoD Component along with a copy of the released records.

C. Subject to paragraph D. of this appendix, unless a delay of customer notice has been obtained under appendix H of this part, the law enforcement office or personnel security element shall, within 14 days, personally serve or mail to the customer, at his or her last known address, a copy of the certificate required by paragraph B., along with the following notice:

"Copies of or information contained in your financial records lawfully in possession of [name of Component] have been furnished to [name of Agency or Department] pursuant to the Right to Financial Privacy Act of 1978 for the following purposes: [state the nature of the law enforcement inquiry with reasonable specificity]. If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may

have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

D. If a request for release of information is from a Federal Agency, as identified in E.O. 12333, authorized to conduct foreign intelligence or foreign counterintelligence activities, the transferring DoD Component shall release the information without notifying the customer, unless permission to provide notification is given in writing by the requesting Agency.

E. Whenever financial data obtained under this part is incorporated into a report of investigation or other correspondence; precautions must be taken to ensure that:

1. The reports or correspondence are not distributed outside the Department of Defense except in compliance with paragraph B.; and

2. The report or other correspondence contains an appropriate warning restriction on the first page or cover. Such a warning could read as follows:

"Some of the information contained herein (cite specific paragraph) is financial record information which was obtained pursuant to the Right to Privacy Act of 1978, 12 U.S.C. 3401 *et seq.* This information may not be released to another Federal Agency or Department outside the Department of Defense except for those purposes expressly authorized by Act."

APPENDIX H TO PART 275—PROCEDURES FOR DELAY OF NOTICE

A. The customer notice required when seeking an administrative subpoena or summons (paragraph B. of appendix C to this part), obtaining a search warrant (paragraph B. of appendix D to this part), seeking a judicial subpoena (paragraph B. to appendix C to this part), making a formal written request (paragraph B. to appendix C to this part), obtaining emergency access (paragraph C. of appendix F to this part), or transferring information (paragraph C. of appendix G to this part), may be delayed for an initial period of 90 days and successive periods of 90 days. The notice required when obtaining a search warrant (paragraph B. of appendix D to this part) may be delayed for a period of 180 days and successive periods of 90 days. A delay of notice may only be made by an order of an appropriate court if the presiding judge or magistrate finds that:

1. The investigation is within the lawful jurisdiction of the Government authority seeking the records.

2. There is reason to believe the records being sought are relevant to a law enforcement inquiry.

3. There is reason to believe that serving the notice will result in:

a. Endangering the life or physical safety of any person.

b. Flight from prosecution.